

# EXHIBIT 3

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WESTERN DIGITAL TECHNOLOGIES, INC.,  
Petitioner

v.

OCEAN SEMICONDUCTOR LLC,  
Patent Owner

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Case No. IPR2021-00929  
Patent No. 7,080,330

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**Petition for *Inter Partes* Review**

active patent cases); *see also Western Digital*, IPR2020-01410, Paper 13, 10-11; *Micron Tech., Inc. v. Godo Kaisha IP Bridge 1*, IPR2020-01008, Paper 10, 14 (PTAB Dec. 7, 2020); *Sand Revolution*, IPR2019-01393, Paper 24, 9.

Further, Patent Owner asserted the same seven patents against six other defendants in the Western District of Texas. *See* Ex. 1018 (Complaints). Petitioner is the latest filed case with the highest docket number (-1216), suggesting that Petitioner will likely be the last defendant scheduled for trial. Ex. 1017, 20; *see also* Exs. 1015, 1018.

In contrast, the Board must adhere to the one-year statutory deadline prescribed by 35 U.S.C. §316(a)(11) and has done so throughout the COVID-19 pandemic. *See Sand Revolution*, IPR2019-01393, Paper 24, 9.

Accordingly, factor 2 favors institution.

**C. Factor 3: There is No Schedule and the District Court’s Minimal Investment in the Merits of the Litigation Favors Institution**

The district-court case is in its infancy. There is no schedule, no trial date has been set, no discovery has occurred (*e.g.*, infringement contentions have not been served), and the district court has invested no time on the merits of the litigation. Moreover, Petitioner has been diligent, filing this petition less than five months after Patent Owner filed the district-court complaint asserting seven patents containing hundreds of combined claims. *See*

*generally* Ex. 1015. Each asserted patent is asserted against third-party overseas manufacturing methods, further complicating the investigation and analysis. *See id.*

Accordingly, factor 3 favors institution. *See Apple Inc. v. Seven Networks, LLC*, IPR2020-00156, Paper No. 10, 11 (PTAB Jun. 15, 2020) (finding diligence in filing petition four months before §315(b) bar date); *Micron*, IPR2020-01008, Paper 10, 16 (factor “weighed strongly against exercising discretion to deny the Petition” where “Petitioner [was] exceptionally diligent filing the Petition, doing so without the benefit of Patent Owner’s infringement allegations.”).

**D. Factor 4: The Minimal Overlap Between Issues in this IPR and the District Court Case Favors Institution**

Petitioner has not served invalidity contentions in the district-court case. However, Petitioner expects that its invalidity positions in district court will be different from the grounds here.

Further, if the Board institutes this IPR, Petitioner will stipulate that it will not pursue invalidity on the same grounds in district court. *See Fintiv*, IPR2020-00019, Paper No. 11, 12-13 (use of different prior art in IPR petition); *Western Digital*, IPR2020-01410, Paper 13, 14-15.

Last, the Petition challenges claims 19-21, but Patent Owner’s district-court complaint only alleges infringement of claim 19. Ex. 1015, 48 (¶156).

As such, the Board will resolve claims which the district court will not address, while the opposite is not true. *See Seven Networks*, IPR2020-00156, Paper 10, 17.

Factor 4 thus also favors institution.

**E. Factor 5: The Parties are Involved in the District Court Case, But Additional RPI are Not**

Petitioner and Patent Owner are involved in the district-court case, but the additional real-parties-in-interest are not. Accordingly, factor 5 is neutral.

**F. Factor 6: The Merits of this IPR Favor Institution**

Petitioners' Grounds are especially strong (*see* Sections VI-VIII), further favoring institution. *See Fintiv*, IPR2020-00019, Paper 11, 14-15; *Western Digital*, IPR2020-01410, Paper 13, 15-16.

**VI. Relevant Information Concerning the Contested Patent**

**A. Overview of the '330 Patent**

The '330 patent is directed to “monitoring and/or controlling a semiconductor fabrication process” and more particularly to “concurrently measuring critical dimensions and overlay ... and controlling operating parameters to refine the process in response to the measurements.” Ex. 1001, 1:7-12.

The '330 patent explains that the continuing trend in the semiconductor industry towards higher device densities demands more precise control of

Respectfully submitted,

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